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REMARKS

Claims 1-17, 19-21, 23-26 and 29-38 were pending. Claims 39-46 are added in this amendment. Applicant has addressed the Examiner's §112 concerns by amending claims 12 and 26.

Summary of Rejections

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-38 were rejected as being anticipated by U.S. Patent No. 2,928,530 to Sauey.

Claims 4 and 14 were rejected as obvious over Sauey in view of U.S. Patent No. 5,769,230 to Koefeldt.

Claims 4, 6, 14 and 16 were rejected as obvious over Sauey in view of Koefeldt and further in view of U.S. Patent No. 5,351,814 to Apps.

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-38 were rejected as obvious over Apps in view of Sauey and further in view of U.S. Patent No. 5,335,814 to Hepp.

Claims 1-5, 7-15, 17, 19, 20, 23-26 and 29-38 were rejected as obvious over U.S. Patent No. 5,965,300 to Gale in view of Apps, Sauey and Hepp.

Claims 20 and 23-24 were rejected as obvious over Apps in view of Gale, Koefeldt, Sauey and Hepp.

Claim 21 was rejected as obvious over Apps in view of Gale, Sauey, Hepp and U.S. Patent No. 5,673,791 to Jamison, or over Gale in view of Apps, Sauey, Hepp and Jamison.

§ 102 Rejection Over Sauey

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Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-38 were rejected as being anticipated by U.S. Patent No. 2,928,530 to Sauey.

Sauey discloses a shotgun shell box. The Sauey patent discloses that "the cylindrical objects are completely surrounded along their length so they can stand erect . . ." (col. 1, lines 28-29). Sauey also states, "[T]he vertical protuberances 32 support a considerable length of the object in contact therewith so that there is no tendency for the object to incline but it remains in the vertical position at all times and regardless of the attitude of the box itself." (col. 2, lines 36-40, emphasis added). Since the box in Sauey is for shotgun shells, it is acceptable to contact the entire length of the object (the shell) with the vertical protuberances. However, the present invention avoids contact with a label on a beverage container to prevent damage to the label.

The "standoff portions" in claims 1, 3 and 30 are "low profile." The "vertical protuberances 32" in Sauey are not low profile, but contact a considerable length of the object. Therefore, claims 1, 3 and 30 are not anticipated by Sauey.

Claim 3 also recites that the bottle is contacted below the central label area by the standoff portions. Claim 12 recites that the at least one standoff member "does not contact the label of the container." Claim 34 has been amended to recite that the standoff members do not contact the label of the container. Again, the Sauey shotgun shell box contacts the shells along a considerable length of the shells. Therefore, claims 3, 12 and 34 are not anticipated by Sauey.

§103 Rejection Over Sauey in View of Koefeldt

The Examiner has rejected claims 4 and 14 as obvious over Sauey in view of U.S. Patent No. 5,769,230 to Koefeldt. The Examiner admits that Sauey does not disclose "lid capture area" formed in the lid inner surface, as claimed. The Examiner's proposed motivation to add them is "so that adjacent items do not impact or rub each other and to prevent top damage from

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occurring to the items.” However, the lid capture area would be useless in the Sauey shotgun shell box because the shotgun shells are already completely separated from one another by the dividing walls 18 and the vertical protuberances 32. As indicated above, Sauey states, “[T]he vertical protuberances 32 support a considerable length of the object in contact therewith,” so the shells would be unable to impact or rub each other. The shells would also be spaced far enough from the cover 12 in Sauey that there would be no danger of damage to the shells from the cover 12. Therefore, claims 4 and 14 are not obvious.

§103 Rejection Over Sauey in View of Koefeldt and Apps '814

Claims 4, 6, 14 and 16 were rejected as obvious over Sauey in view of Koefeldt and further in view of U.S. Patent No. 5,351,814 to Apps. For the reasons stated above, it would not be obvious to modify Sauey in such a manner to meet the terms of claims 4 and 14.

Sauey and Apps '814 do not show hinged lids. The Examiner has not offered any motivation for replacing the separate cover 12 of Sauey with a hinged lid. Therefore, claims 6 and 16 are not obvious.

§103 Rejection Over Apps in View of Sauey and Hepp

Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26 and 29-38 were rejected as obvious over Apps in view of Sauey and further in view of U.S. Patent No 5,335,814 to Hepp.

The Examiner admits that Apps does not show the claimed standoff portions. As shown in Figure 11 of Apps, Apps discloses divider walls between the bottles, but does not disclose standoff portions. The divider walls are in direct contact with the bottles. The case receives significantly less than half of the height of the bottle. The rest of the bottle protrudes from the case. The divider walls already contact the surface of the bottles. Thus, there would be no

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motivation to add standoff portions to "provide more effective securement," as the Examiner proposes.

Hepp also only engages the base of the bottle. Hepp has solid walls 46 that extend the full height of the dividers. Hepp does not teach standoff portions that are low profile or shorter than the divider walls.

Sauey is a shotgun shell box. One of skill in the art of cases for beverage containers would not look to shotgun shell boxes. Thus, Sauey is not analogous art. Additionally, once again, Sauey teaches vertical protuberances 32 that contact a considerable length of the object (shotgun shell). Thus, even if Apps were modified in accordance with Sauey, it would not include standoff portions that are "low profile" or shorter than the divider walls.

For these reasons, all of the claims are patentable over Apps, Sauey and Hepp.

§103 Rejection over Gale in view of Apps, Sauey and Hepp

Claims 1-5, 7-15, 17, 19, 20, 23-26 and 29-38 were rejected as obvious over U.S. Patent No. 5,965,300 to Gale in view of Apps, Sauey and Hepp.

Gale discloses a cardboard carton with pulp inserts for shipping glass bottles. The Examiner calls the cylindrical rib 96 of Gale a "standoff portion." It is incorrect to say that Gale discloses everything except being integrally molded as one piece. Additionally, there is no motivation for integrally molding the Gale carton and pulp inserts.

Gale does not disclose "standoff portions" that maintain the beverage container in a spaced relationship from (what the Examiner calls) the divider members. Rather, in Gale, the beverage container appears to be in direct contact with that which the Examiner calls the divider members. Additionally, claims 1, 12 and 20 have been amended to clarify that the lower portion

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of the container is on the outer surface. The circular rib 96 of Gale does not engage the outer surface of the bottle.

The Examiner has previously indicated that claim 30 would be allowable over these references. The new reference, Sauey, is cumulative in this regard. Claim 30 recites, "the plurality of standoff portions each extending from a longitudinally-extending one of the divider members to a transversely-extending one of the divider members in the corners." The circular rib 96 in Gale does not include this feature.

Claim 34 recites, "the standoff portions protruding inwardly toward the container from the divider members." The circular rib 96 in Gale does not disclose this feature.

§103 Rejections Over Apps in view of Gale, Koefeldt, Sauey and Hepp

Claims 20 and 23-24 were rejected as obvious over Apps in view of Gale, Koefeldt, Sauey and Hepp. It is incorrect for the Examiner to say, "Apps discloses the invention except for the hinged lid." Apps does not disclose spacer members that contact the containers and space the containers from the divider members and the sidewalls, as claimed in claim 20. For the reasons stated above with respect to the rejection over Apps in view of Sauey and Hepp, claims 20 and 23-24 are also not obvious.

Additionally, the Examiner has not offered sufficient motivation for adding a hinged lid to the Apps case. Such a modification would require extensive redesign of the Apps case. The Apps case receives significantly less than half of the height of the bottle. The cover in Apps is taller than the base. Because of the height of the cover in Apps, the cover could not be hinged on one of the walls and still fit over the tops of the bottles. For this additional reason, claims 20 and 23-24 are not obvious over Apps.

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§103 Rejection Over Apps in View of Gale, Sauey, Hepp, Jamison or Gale in view of
Apps, Sauey, Hepp and Jamison

Claim 21 was rejected as obvious over Apps in view of Gale, Sauey, Hepp and U.S. Patent No. 5,673,791 to Jamison, or over Gale in view of Apps, Sauey, Hepp and Jamison. For the reasons stated above with respect to claim 20, claim 21 is patentable.

Closing

Please charge Deposit Account No: 50-1984 \$144 for eight additional claims total in excess of twenty. Reconsideration is requested. If any additional fees are due, please charge Deposit Account No. 50-1984.

Respectfully submitted,

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